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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1954.

No. 464

EARL L. STARY, et al.,
*Appellants*

*vs.*

CITY OF BROOKLYN, et al.,
*Appellees*

On Appeal from the Supreme Court of Ohio

## JURISDICTIONAL STATEMENT.

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On Appeal from the Supreme Court of Ohio

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## JURISDICTIONAL STATEMENT.

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Appellants appeal from a judgment of the Supreme Court of Ohio affirming a judgment of the Court of Appeals of Cuyahoga County, Ohio, sustaining the constitutionality of a municipal ordinance of the City of Brooklyn, Ohio, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial federal question is presented.

## OPINIONS BELOW.

The opinion of the Supreme Court of Ohio, from which this appeal is taken, is reported in 162 Ohio St. 120, 121 N. E. (2d) 11.

The majority and dissenting opinions of the Supreme Court of Ohio are set forth herein as Appendix A at pages 1a-25a.

A copy of the judgment from which this appeal is taken appears herein as Appendix B at page 26a.

## JURISDICTION.

This suit was commenced on November 2, 1951, by the filing of a petition for a declaratory judgment, injunction, and for equitable relief against the enforcement of section 7 of a certain ordinance of the City of Brooklyn, Ohio, which limits to 60 days the time within which a house trailer or occupant thereof may remain in a duly licensed house trailer park. The relief was sought upon the asserted ground that this provision of the ordinance is unconstitutional in that it violates Section 1 of the Fourteenth Amendment of the Constitution of the United States. The plaintiffs are the owners and operators of a house trailer park in Brooklyn, Ohio. The defendants are the municipality, its mayor, chief of police, building inspector and fire chief. After the filing of the petition, two occupants of a house trailer and residents of the plaintiffs' park intervened and pursuant to leave of Court filed an intervening petition which joined in the prayer of the plaintiffs' petition and also requested relief from the enforcement of the ordinance upon the ground of its unconstitutionality.

The trial court after a hearing denied all relief to the plaintiffs and intervening plaintiffs, appellants, on October 14, 1953. (R. 38-40) Upon appeal, the Court of Common Pleas of Cuyahoga County, Ohio, affirmed without opinion on December 16, 1953. (R. 72-73) Upon further appeal, the Supreme Court of Ohio affirmed and expressly sustained the ordinance as against the challenge by appellants that it violates section 1 of the Fourteenth Amendment. (R. 74-92)

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The judgment and decision of the Supreme Court of Ohio was entered on July 7, 1954. There was no petition for a rehearing, and the notice of appeal to this Court was filed in the Supreme Court of Ohio on October 2, 1954. (R. 1-4)

The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by Title 28, United States Code, section 1257(2).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment in this type of case on direct appeal: *Dean Milk Company* v. *City of Madison,* 340 U. S. 349, 351; *Lovell* v. *City of Griffin,* 303 U. S. 444; *Reinman* v. *City of Little Rock,* 237 U. S. 171; *Atlantic Coast Line Railroad Company* v. *City of Goldsboro,* 232 U. S. 548, 555.

## STATUTE INVOLVED.

Within the meaning of Title 28, U.S.C. 1257(2), a municipal ordinance is subject to review in the same manner as a state statute. *King Manufacturing Company* v. *Augusta,* 277 U. S. 100; *Jamison* v. *Texas,* 318 U. S. 413.

The ordinance involved was adopted by the Village of Brooklyn, Ohio, on July 8, 1940, as Ordinance No. 1940-13 entitled "An Ordinance Regulating Trailers and Trailer Camps Within the Limits of the Village of Brooklyn, Ohio, and Providing for the Licensing of Trailer Camps." While the text of the entire ordinance (R. 19-26) is set forth herein as Appendix C, pages 27a-33a, the only provisions alleged to violate Section 1 of the Fourteenth Amendment are as follows:

> "Section 7. It shall be unlawful for any person to park or occupy a trailer in a trailer camp for more than sixty days, and no trailer camp licensee shall

permit a trailer or occupants thereof to remain in a trailer camp for more than sixty days; nor shall a trailer licensee permit a trailer or the occupants thereof to re-enter the trailer camp for ninety days after the expiration date of a former occupancy; and it shall be unlawful for the occupants of a trailer to park or occupy a trailer in any trailer camp for ninety days after the expiration date of a former occupancy in any other trailer camp within the village limits.'''

## QUESTION PRESENTED.

Is the above quoted section 7 of the ordinance regulating trailer parks unconstitutional as an improper exercise of the police power in that it bears no reasonable relation to the public health, safety, morals or welfare, deprives duly licensed trailer park operators and residents of house trailers of their respective rights and of the full use of their respective property without due process of law, denies them the equal protection of the law, and abridges their privileges and immunities as citizens of the United States, contrary to section 1 of the Fourteenth Amendment to the Constitution of the United States.

## STATEMENT OF THE CASE.

Appellants Earl L. Stary and Myrtle M. Stary own and operate the Ideal Trailer Park which has been in business at the same location in Brooklyn, Ohio, a suburb of Cleveland, since September 1939. The business consists in renting space on privately owned land equipped with water, sewer and electric connections, and other facilities, to the occupants of house trailers who reside and dwell therein. The operators of the trailer park are duly licensed and regulated by the city and State. The park is a lawful non-conforming use under the zoning ordinance of the city. In December 1951 it contained 67 house trailers of various sizes occupied by individuals and families as places of habitation.

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The intervening plaintiffs, appellants, are residents of a house trailer in the Ideal Trailer Park and gainfully employed in the Cleveland area. Their petition alleges a desire to maintain their residence in the park for an indefinite period while they are so employed. It further alleges that no other trailer park exists in the City of Brooklyn, and that if the 60 day limitation of the local ordinance is enforced against them, they will be required to leave the City of Brooklyn which they have selected as their place of abode.

The ordinance in force in the City of Brooklyn regulating trailer parks provides that it is a criminal offense, punishable by fine, for any person to occupy or park a trailer in any trailer park in the city for more than 60 days, and for any park operator to permit a trailer or the occupants thereof to remain in a trailer park for more than 60 days. The city officials threatened to enforce this provision of the ordinance by arrests and prosecution of the plaintiffs and intervening plaintiffs, and others similarly situated, and the instant suit was brought to enjoin such enforcement.

The petitions filed in the trial court by appellant park operators and adopted by appellant house trailer occupants asserts that the 60 day limitation in the ordinance violates section 1 of the Fourteenth Amendment. (R. 27, R. 35) The answer of the defendants denies that the ordinance violates any article or section of the Constitution of the United States. (R. 32) The trial court held the ordinance to be a valid exercise of the police power and entered judgment against appellants. (R. 40) This constitutional issue was preserved in the intermediate appellate court and on appeal to the Supreme Court of Ohio which states as one of the questions raised by the appeal:

"(3) Is the ordinance an illegal exercise of the police power in that it is arbitrary and unreasonable or without direct relation to the public health, safety or welfare, and hence in violation of Section 1, Article XIV, Amendments, Constitution of the United States, and of Section 1 of Article I of the Constitution of Ohio?" (R. 77)

## THE QUESTIONS ARE SUBSTANTIAL.

The federal questions in this case are substantial because they involve: (1) the propriety of discriminatory legislation against housing accommodations in a new, modern, compact, apartment-like form currently being used by approximately 2,000,000 persons in the United States; (2) the right of a property owner to freedom from interruptions every 60 days of a beneficial and legally authorized use of his property; (3) the right of a person to establish a home and fixed residence in a place of his own choice without being evicted at the end of 60 days and thereafter exiled for 90 days for no other reason than that his home is mobile; (4) the denial of fundamental rights and liberties to a class of home owners and citizens whose members are both substantial and increasing; (5) an oppressive ordinance which makes involuntary migrants of people and disturbs their way of life without any benefit to the health, morals, safety, or welfare of the other inhabitants of the municipality to compensate for the burden upon the people compelled to migrate or the disruption of the business of the park operator; and (6) an important subject matter in a field of newly developed activity in which there is no prior decision of the Supreme Court of the United States dealing with this particular subject matter, and in respect to which the state court decisions are in conflict and the Court from whose judgment this appeal arises is sharply divided.

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1. The modern house trailer is a mobile home with all the conveniences of a small apartment. It is a new development in housing stimulated by the needs and demands of World War II and the housing shortage following the war. It is a product of American industry and ingenuity. An average of 70,000 new units are manufactured each year in the United States. Approximately 2,000,000 people in this country reside in house trailers located in 10,000 trailer parks. The house trailer has developed, both in quality and quantity, to the point where it is recognized today as a permanent addition to the housing requirements and desires of the American people.

The above facts are substantiated by numerous published articles and surveys including one contained in the April 1954 issue of Housing Research, a publication of the Housing and Home Finance Agency of the Federal Housing Administration. Excerpts from this publication and other periodicals of national standing are set forth as Appendix D herein, pages 34a-41a.

That the modern trailer is a legally recognized form of housing is illustrated by recent statutes enacted in such states as Illinois, Michigan, Ohio and California. In California, by statute, a house trailer occupied by a debtor and his family and of a value not exceeding $2,500.00 is exempt from execution or attachment. (Deering's California Code, CCP sec. 690.24)

The Attorney General of Ohio has issued an opinion that a person living in a trailer who is possessed of the residence qualifications contained in the State statute may register and vote in the precinct in which such trailer is located if his habitation is fixed in such precinct and if it is his intention to return thereto when he is absent therefrom. 1943 Ohio, Opinions of Attorney General, 6087.

It should also be noted that the Federal Government recognizes the house trailer or mobile home as part of the nation's housing inventory and considers it an important phase of its multi-pronged attack on the housing problem. During the existence of the Controlled Materials Allocation Plan, the Federal Government's housing authority, the Housing and Home Finance Agency, was named a claimant agency for house trailers by the Defense Production Administration; and trailer coach materials allocations were administered by the same division, the Construction Division of the National Production Authority, that administered the allocations for conventional housing. The Defense Housing and Community Facilities and Services Act of 1951 (P. L. 139, 82d Cong., approved September 1, 1951) identifies house trailers with prefabricated homes in Title V, and in Title III authorizes loans to be made for housing which is of mobile character. House trailers have been purchased in quantity by the Federal Government to provide immediate housing accommodations after disasters; and for years the service departments have been using trailer coaches to house military personnel. The Atomic Energy Commission has cooperated in providing mobile homes as housing for construction workers engaged in building atomic energy installations. The Office of Civilian Defense is currently engaged in studying the utilization of mobile homes as an answer to the housing problems faced by potentially displaced civilians. The Act of Congress providing for family quarters for personnel of the military departments (P. L. 765, 83rd Cong., approved September 1, 1954) authorizes the Secretaries of military departments to acquire up to 5000 units of house trailers.

In the instant case, the ordinance reveals an unawareness of the real nature of the problem, which is fundamentally a housing problem not indigenous to any locality, and this

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lack of understanding coupled perhaps with a distrust for the new and unconventional, has resulted in legislation which deprives the individual of rights guaranteed by the Fourteenth Amendment.

This case does not involve any question of the power of the municipality to enact an ordinance regulating house trailer parks. The state and municipality have the power, which both have exercised, to adopt and enforce reasonable regulations with respect to both the house trailer and the park in which it is situated. This case concerns only a single section of the ordinance which limits to 60 days the time within which a house trailer or its occupants may remain in a given house trailer park. This provision strikes at the core of the concept that the house trailer, under modern conditions, is a home.

2. The ownership and operation of a house trailer park is a legitimate business and legally authorized use of real estate. There is no claim by the City of Brooklyn or any one else in the instant case that the house trailer park involved is unsanitary, unsafe, or unhealthy, or that its operation is conducive to a breakdown in morals, or amounts to a nuisance, or in any manner fails to conform to state and municipal regulations. Otherwise the Ideal Trailer Park would not be licensed or allowed to operate for even 60 days. There is also no claim in this case that a house trailer park is a nuisance *per se*, and the courts have held that a house trailer park is not a nuisance *per se*. *Moore* v. *Adams*, 200 Ark. 810, 141 S. W. (2d) 46 (1940); *Pringle* v. *Shevnock*, 309 Mich. 179, 14 N. W. (2d) 827 (1944).

The 60 day limitation provision of the ordinance is an unreasonable interference with the operation of a lawful business in that it compels a park operator to cater to

gypsies, nomads, and transients rather than a more stabilized clientele. This obviously places a drastic restriction upon the fundamental right of the park operator to be selective in his choice of tenants. A compulsory 60 day turnover virtually destroys freedom of choice of tenants. The economic compulsion to maintain full occupancy of the park leaves the park operator no selectivity. To remain in business he must take whomever or whatever comes along, whether desirable or undesirable. The ordinance does not reduce the number of house trailers in the park at any one time. It simply compels a 60-day turnover of house trailers and of tenants, thereby subjecting the park owner and operator to unnecessary inconvenience and interference in the pursuit of a lawful business, and the residents and occupants of house trailers to unnecessary harassment. The inconvenience, interference and harassment accomplishes nothing except a change in the identity of the house trailers and of the occupants thereof.

If the rental of space in a house trailer park by a person whose needs or desires are to remain in the park for more than 60 days does not adversely affect health, safety, morals or general welfare of a municipality, it is in the public interest that such use not be prohibited. In *Weaver* v. *Palmer Bros. Co.*, 270 U. S. 402 (1926), the court held unconstitutional a statute of Pennsylvania which prohibited the use of a material known as "shoddy" in the manufacture of any mattress, pillow, featherbed, cushion or similar article, saying at pages 412-413:

> "• • • and it is a matter of public concern that the production and sale of things necessary or convenient for use should not be forbidden. They are to be distinguished from things that the State is deemed to have power to suppress as inherently dangerous."

Apparently the objection of the municipality to the house trailer park is that permanent occupancy therein

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tends to create a "slum district" and the majority opinion of the Supreme Court of Ohio appears to have adopted this view. (R. 90) The answer to this objection is that the city has adequate power to prevent slums by the enforcement of the health, sanitation and safety provisions of the state law and the ordinance in question. Furthermore, if the purpose of the 60 day stay limitation is to eradicate slums, it is apparent that this measure has no reasonable relationship to the end sought to be achieved. A trailer park is more likely to acquire the characteristics of a slum when used exclusively by gypsies, nomads, and transients than when used by residents as a fixed or permanent abode. Permanent dwellers have greater respect and concern for the condition of their home sites than transients.

In *Adams* v. *Tanner*, 244 U. S. 590 (1917), the Court holds arbitrary, oppressive, and violative of due process a certain statute of the State of Washington, saying at page 594-595:

> "Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked."

3. Freedom to select a home site and to reside in a place adaptable for indefinite habitation as long as one chooses is a right protected by the Fourteenth Amendment. Exclusion from a home site or place of residence has been permitted only under the war powers of the federal government, as the Court stated in *Korematsu* v. *United States*, 323 U. S. 214 (1944) at page 218:

> "Nothing short of apprehension by the proper military authorities of the gravest imminent danger to the public safety can constitutionally justify * * * exclusion from the area in which one's home is located."

The Court further states at pages 219-220:

> "Compulsory exclusion of large groups of citizens from their homes, except in circumstances of direst emergency and peril is inconsistent with our basic governmental institutions."

If the exclusion of citizens in large numbers from their homes all at one time is inconsistent with our basic governmental institutions, the exclusion of one or two citizens from a home site at the end of a 60 day period and the exclusion of a succession of other citizens at the end of respective 60 day periods is no less inconsistent with our basic governmental institutions.

It is no more compatible with the Fourteenth Amendment to provide that no house trailer or occupant or resident of a house trailer shall remain in a park for more than 60 days than to provide that no house trailer or occupant thereof shall enter upon or reside in an existing licensed trailer park. If the municipality, after licensing a trailer park, should attempt to prohibit any house trailer or occupant from entering upon or parking within it, the unconstitutionality of this action would be obvious. In *City of Richmond* v. *Deans*, 37 F. (2d) 712 (C. A. 4,

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1930), affirmed without opinion in 281 U. S. 704, the Court held unconstitutional an ordinance which purported to be a zoning ordinance, prohibiting a person from using as a residence any building on any street between intersecting streets where the majority of the residences on such street are occupied by those with whom such person is forbidden to intermarry.

In *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589, this Court in defining the personal liberties guaranteed by the Fourteenth Amendment, said at p. 589:

> "The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of his faculties; to be free to use them in all lawful ways; *to live and work where he will;* to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned." (Italics supplied.)

The City of Brooklyn may contend that the ordinance here involved does not exclude a person from his home inasmuch as his home is mobile and he may take it with him. This ignores the fact that it is the home site and not the quality, characteristics or architecture of the residence thereon which is important to a person who desires to continue his business, social or other contacts in a given community.

4. The ordinance denies the equal protection of the laws to a class of persons who, for reasons of convenience, necessity, or choice, live in a house trailer. These persons are not social outcasts or undesirables. The agreed statement of facts show that the average annual income in 1950 of trailer coach families is estimated at $4,450 as compared with the national average of $3,313. (R. 71)

Persons who reside in a conventionally constructed or a prefabricated stationary home are not compelled to move every 60 days. Persons who live in a boarding house, hotel or motor court are not compelled to move every 60 days. There is no justification in reason or decency which compels residents of house trailers, which in some instances afford better living accommodations than conventional houses, to move every 60 days. The residents of house trailers pay taxes, and have employment, children in schools, church affiliations, voting privileges and an interest in civic matters. These are fundamental rights and freedoms which are incompatible with the requirement of moving to a new residence site at the end of 60 days and banishment in exile for 90 days.

In *County Com'rs of Anne Arundel County* v. *English*, 182 Md. 514, 35A(2d) 135, 142 (1943) the Court of Appeals of Maryland held a certain state tax upon house trailers to be unconstitutional as violative of the Fourteenth Amendment, saying at 35A(2d) 142:

> "• • • The practically exclusive use of a trailer is a place of habitation, and in the instant case, the owner who pays the personal property taxes and the motor vehicle tax on the trailer is compelled to pay additional tax for living in it. By no stretch of the imagination could occupying the trailer as a place of habitation be considered an occupation or a business. Everyone does not have to go in business, but everyone has to have a home or shelter. Occupying a home is not a privilege. It is essentially a necessity. Here shelter is necessary to life itself. To meet this necessity, the trailer is constructed as a place of habitation, and it is the principal use to which it can be put."

5. The 60 day stay provision bears no reasonable relation to public health, safety, morals or welfare. On the contrary, the constant moving of large house trailers, involving the disconnection and reconnection of water, sew-

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age and electrical facilities, may possibly be more detrimental to the public health, safety, morals and welfare than the continued occupancy of a park by these house trailers. The park will be at least just as safe, sanitary and moral with respect to occupancy by a resident who has remained more than 60 days as it will be with respect to a new resident. Living conditions in the park are not improved by a compulsory 60-day turnover of house trailers and occupants. The rotation of house trailers and of tenants can have no possible beneficial effect upon the health, safety, morals or welfare of the community. The ordinance is therefore an improper exercise of the police power and an invasion of rights guaranteed by the Fourteenth Amendment.

The dissenting opinion of Justice Hart of the Supreme Court of Ohio in the instant case points this matter up very clearly. (R. 102-103):

> "In the instant case, the ordinance requires each occupant of a trailer, under severe penalty, to move from his rented lot or park space and out of the park after 60 days of occupancy. Thereafter, he is not permitted to park in this or any other trailer park in the city of Brooklyn until after a period of 90 days. He is not even permitted during this 90-day period, to go back to the park as a resident in a trailer which has a right of occupancy, without being subject to arrest under this ordinance. In the meantime, any other trailer and its occupants, regardless of how much less desirable they may be, may move into the same space or parking lot for 60 days, and still another may do the same for a period of 30 days, after which the original trailer and the same occupants who have been exiled from the city for 90 days may return to the very same location and remain in the park under the same conditions as upon the former occupancy for another period of 60 days when they must again move out. In other words, the same space or lot may be occupied by a trailer continuously, but the occupancy

must be by a different trailer and different occupants every 60 days. These facts, in my opinion, make it clearly apparent that the purpose of the ordinance has no relation to the health and welfare of the community."

6. The impact of mobile home living upon our modern economy is so recent and novel that to our knowledge no case involving a mobile home or a house trailer park has been passed upon by the Supreme Court. The lower courts at the state level hold conflicting views with respect to the constitutionality of the ordinance provision involved herein. For instance, the decision of the Supreme Court of Ohio in this case is contrary to *Town of Southport, Chemung County* v. *Ross*, 109 N. Y. Supp. (2d) 196. See also *Richards* v. *City of Pontiac*, 305 Mich. 666, 9 N.W. (2d) 885.

In addition to the conflict among the several jurisdictions Justice Hart and Justice Stewart of the Supreme Court of Ohio dissented from the majority opinion in the instant case and are of the opinion that the provision in question is repugnant to the Fourteenth Amendment.

Respectfully submitted,

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## APPENDIX A.

Majority opinion and dissenting opinion of the Supreme Court of Ohio. (R. 74-107)

*Stary et al., Appellant,* v. *City of Brooklyn, et al., Appellees* (No. 33897—Decided July 7, 1954).

Appeal from the Court of Appeals for Cuyahoga county.

This is an action "for declaratory judgment, injunction and equitable relief" brought by Earl L. and Myrtle M. Stary, partners doing business as Ideal Trailer Park, against the city of Brooklyn located in Cuyahoga county and the mayor, chief of police, building inspector and fire chief of the city of Brooklyn. The petition was filed November 2, 1951.

In May of 1952, A. W. Christian and Ralph H. Bassett, by leave, intervened as petitioners. They were occupants of the trailer camp here involved. The plaintiffs seek judgment in reference to the validity of an ordinance enacted by the city of Brooklyn regulating trailers and trailer camps within the limits of the city of Brooklyn. The original ordinance was enacted July 8, 1940, and was amended in some particulars on three occasions, the last being in 1947. Section 7 of the ordinance against which the criticisms of the plaintiffs are chiefly directed has not been changed so far as the record reveals. That section provides:

"It shall be unlawful for any person to park or occupy a trailer in a trailer camp for more than sixty days, and no trailer camp licensee shall permit a trailer or occupants thereof to remain in a trailer camp for more than

sixty days; nor shall a trailer licensee permit a trailer or the occupants thereof to re-enter the trailer camp for ninety days after the expiration date of a former occupancy; and it shall be unlawful for the occupants of a trailer to park or occupy a trailer in any trailer camp for ninety days after the expiration date of a former occupancy in any other trailer camp within the village limits."

The same ordinance was the subject of litigation on a previous occasion and the decision of this court in respect thereto, rendered April 1, 1942, is reported as *Renker* v. *Village of Brooklyn*, 139 Ohio St., 484, 40 N. E. (2d), 925. In that case, the constitutionality of the ordinance was attacked, with particular reference to section 7, and this court held the ordinance constitutional.

In the present action, which was instituted approximately nine years after the decision of this court in the *Renker case*, the plaintiffs urge the following three principal grounds for relief against the ordinance, which they assert did not exist at the time of the trial of the *Renker case*:

(1) Change in conditions, including particularly a great increase in the use of house trailers, increase in the average size thereof and great improvements in their construction and equipment.

(2) The enactment by the General Assembly of Ohio in 1951 of an act (Sections 1235-1 to 1235-5, inclusive, General Code) with respect to the regulation of house-trailer parks, in which act the Public Health Council was authorized to "make regulations to be of general application throughout the state governing the location, layout, construction, drainage, sanitation, safety and operation of house-trailer parks."

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(3) The adoption in December 1951 by the Public Health Council of comprehensive regulations with respect to trailer parks pursuant to the aforesaid statutory authorization.

In the instant case, the Common Pleas Court held that there is no conflict between the statutes above referred to and the city ordinance; that the ordinance in question is a valid exercise of the police power of the city; and that the plaintiffs are not entitled to injunctive relief.

Upon appeal the Court of Appeals affirmed the judgment of the Common Pleas Court.

The cause is in this court upon the allowance of a motion of the plaintiffs to certify the record.

*Messrs. Pickrel, Schaeffer & Ebeling, Mr. Maurice J. Leen, Jr.,* and *Messrs. Stanton, Mercer & Hagan,* for appellants.

*Mr. Michael L. Hearns,* for appellees.

Middleton, *J.* In argument the plaintiffs (appellants) state three questions of law, which in substance parallel the above-stated claims. They are:

(1) Have conditions so changed that the decision in the *Renker case* should be modified or overruled?

(2) Does the legislative enactment of 1951, which gives to the Public Health Council power to make regulations of general application throughout the state, supersede the power of a municipality to enact the ordinance here being challenged? If it does not, is the ordinance in conflict with state statutes and, therefore, unconstitutional?

(3) Is the ordinance an illegal exercise of the police power in that it is arbitrary and unreasonable or with-

out direct relation to the public health, safety or welfare, and hence in violation of Section 1, Article XIV, Amendments, Constitution of the United States, and of Section 1 of Article I of the Constitution of Ohio?

The testimony and the agreed statement of facts indicate that the average trailer in plaintiffs' park at the time of trial of this case was 25 feet, 9 inches, in length by 8 feet in width, outside dimensions. The average inside floor area was approximately 200 square feet. In the *Renker case* the average floor space of the trailers was shown to have been approximately 119 square feet.

Although the record shows that the trailers presently in this park are each equipped with water, sewer and electrical connections, many of the trailers are not equipped with individual toilets or shower facilities. The occupants of trailers not so equipped are compelled to use the public toilets and shower facilities provided in two comfort buildings on the premises. Although not established by any evidence, it is stated in the plaintiffs' brief that trailers are generally of greater size today than they were some ten or twelve years ago; that all new trailers 22 or 23 feet in length are "independent trailers," fully equipped with toilet, shower, washstand and bathroom facilities; that some trailers are as much as 50 feet long, sell for approximately $7,500, and are fully equipped; and that a large investment of capital is required to establish a trailer park.

Although the advance in the art of trailer construction, the increase in use of trailers and the increased investment in trailers may be conceded, such changes in conditions do not, in the judgment of this court, materially affect the problem faced by municipalities in the regulation of trailer camps or present a situation legally differ-

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ent from that presented in the *Renker case.* In fact, the increase in the number of house trailers and the popularity of their use would seem to intensify the problem faced by municipalities rather than to alleviate it.

The underlying and controlling problem is whether the public health, safety or welfare of the municipality is affected by the growth of permanent settlements within the municipality, comprised of numerous small buildings in close proximity, each having a floor area equal only to that of an average size room, but housing a family consisting of from two to six persons.

Recognizing the ever increasing importance of the problems growing out of the operation of trailer camps, several states, including Ohio, have passed legislation on the subject. The Ohio act, which was passed in 1951, is so brief that we quote, as follows, the entire act:

Section 1235-1, General Code (Sections 3733.01 and 3733.02, Revised Code):

"The Public Health Council, subject to the provisions of the Administrative Procedure Act, shall have the power to make regulations to be of general application throughout the state governing the location, layout, construction, drainage, sanitation, safety, and operation of house trailer parks. For the purposes of this act a house trailer park shall be defined as any site, lot, field, or tract of land upon which three (3) or more house trailers used for habitation are parked either free of charge, or for revenue purposes, and shall include any roadway, building, structure, vehicle or enclosure used or intended for use as a part of the facilities of such house trailer park. House trailer shall have a meaning as defined in Section 6290 of the General Code."

Section 1235-2, General Code (Section 3733.03, Revised Code):

"On or after the first day of December but before the first day of January of the next year every person, firm or corporation proposing to operate a house trailer park during any part of the next year shall procure a license to operate such park for said year from the board of health of the district in which the house trailer park is located. Except as hereinafter provided no house trailer park shall be maintained or operated in this state after January 1, 1952, without such a license issued by the board of health. A person, firm or corporation who has received a license as aforesaid, upon the sale or disposition of said house trailer park may, upon consent of the board of health have said license transferred, but no license shall be transferred without such consent."

Section 1235-3, General Code (Section 3733.04, Revised Code):

"The board of health of the district in which the house trailer park is located may charge an annual fee for the right to operate such house trailer park. Such fee shall include the cost of licensing and all inspections and shall be as follows:

"For house trailer parks having capacity of less than twenty-five house trailers, not more than fifteen dollars; for house trailer parks having capacity of twenty-five or more house trailers and less than one hundred house trailers not more than twenty-five dollars; and house trailer parks having capacity for one hundred or more house trailers, not more than thirty-five dollars. The basis for determining the capacity of house trailer parks shall be defined in regulations adopted by the Public Health Council under the provisions of Section 1235-1 of the General Code."

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Section 1235-4, General Code (Section 3733.99, Revised Code):

"Whoever violates any provision of this act shall be fined not to exceed one hundred dollars or imprisoned for not to exceed ninety days or both."

Section 1235-5, General Code (Section 3733.05, Revised Code):

"The board of health of the district in which the house trailer park is located or to be located, in accordance with the provisions of the Administrative Procedure Act, may refuse to grant, may suspend or may revoke any license granted to any person, firm or corporation, for failure to comply with any regulation lawfully adopted by the Public Health Council under the provisions of this act."

Unquestionably the statutes above quoted are general in character, and the regulations adopted by the Public Health Council pursuant to those statutes, which regulations are set forth in full in the record in this case, are of general application. The statutes are not, however, such as to pre-empt the entire field of legislation with respect to trailer camps and to bar municipalities from adopting regulations on the same subject so far as such local regulations are not in conflict with general laws.

Section 3 of Article XVIII of the Constitution of Ohio provides:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

In our judgment, the ordinance of the city of Brooklyn here in question was adopted in the exercise of its police power.

The next question then to consider is whether the ordinance conflicts with the general law announced in the statutes. The general law on this subject is well set forth in *Village of Struthers* v. *Sokol* (1923), 108 Ohio St., 263, 140 N. E., 519. The syllabus of that case reads:

"1. Municipalities in Ohio are authorized to adopt local police, sanitary and other similar regulations by virtue of Section 3, Article XVIII, of the Ohio Constitution, and derive no authority from, and are subject to no limitations of, the General Assembly, except that such ordinances shall not be in conflict with general laws.

"2. In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.

"3. A police ordinance is not in conflict with a general law upon the same subject merely because certain specific acts are declared unlawful by the ordinance, which acts are not referred to in the general law, or because certain specific acts are omitted in the ordinance but referred to in the general law, or because different penalties are provided for the same acts, even though greater penalties are imposed by the municipal ordinance."

Many other decisions of this court can be cited to support the rules of law which were announced in the *Struthers case,* but it is sufficient to refer to the opinion in that case, written by Chief Justice Marshall, for a discussion of those decisions. The *Struthers case* has been followed and approved by this court in several decisions, including *City of Youngstown* v. *Evans,* 121 Ohio St., 342, 168 N. E., 844; *City of Columbus* v. *Barr,* 160 Ohio St., 209, 115 N. E. (2d), 391. See, also, *Egan* v. *City of Miami,* 130 Fla., 465, 178 So., 132.

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The rule announced in the *Struthers case* is in harmony with the general rule on the subject of conflict of local and general laws, as indicated by statements generally included in texts and digests, such as that contained as follows in 37 American Jurisprudence, 790, Municipal Corporations, Section 165:

"It has been held that in determining whether the provisions of a municipal ordinance conflict with a statute covering the same subject, the test is whether the ordinance prohibits an act which the statute permits, or permits an act which the statute prohibits." See, also, 62 Corpus Juris Secundum, 291, Municipal Corporations, Section 143; 138 A. L. R., 1208.

It is to be noted that the ordinance in question prescribes a penalty for violation different from and in addition to that prescribed by the statute. Whether a conflict thus results is answered by the syllabus of the *Struthers case,* where it is recognized and stated that a penalty may be provided in an ordinance different from that provided in the statutes, without invalidating the ordinance. In support of that statement Chief Justice Marshall in the opinion at page 269 cited many decisions from Ohio and other states, to which list of authorities many others might now be added.

Plaintiffs assert as one instance of conflict that the ordinance requires the operator of a trailer park to pay to the municipality an annual license fee of $25 and that Section 1235-3, General Code, authorizes the board of health of the district to charge an annual fee for the right to operate such a trailer park, which fee is graduated from $15 to $35 according to the trailer capacity of the park.

No claim is made that either fee is excessive, unreasonable or unrelated to the expense incurred by super-

vision or that the fee provisions are revenue raising measures.

The statute in question does not purport to vest in the board of health the sole right to assess a license fee and it does not deny to the municipality the right to assess such a fee.

Under such circumstances the law is well settled that both fees may be assessed. See 53 Corpus Juris Secundum, 490, Licenses, Section 10; 33 American Jurisprudence, 345, Licenses, Section 24.

The plaintiffs also base their argument in part upon the provisions of Sections 6290 and 6292-2, General Code (Sections 4501.01 and 4503.06, Revised Code), which, respectively, define the term, "house trailer," and prescribe a tax upon house trailers. Section 6292-2 is too long to be quoted. It provides in substance for the payment of a tax by the occupant of a house trailer to the county in which the trailer is located, graduated from $4.50 to $18, depending upon the month in the calendar year when the trailer becomes occupied and subject to the tax. It is specified that the tax is levied for the purpose of supplementing the general revenues of the local subdivision in which the house trailer is located at the time the tax becomes due, and that, once paid, the certificate evidencing payment is good in any county of the state to which the trailer is moved. It is obvious that this tax statute has no relation to the regulatory provisions of the ordinance or to the main question involved in this case which is the restriction as to the length of time which the house trailer is permitted to be located in a trailer camp. The section specifically provides that "the revenues collected under the provisions of this section shall be in

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lieu of any general property tax." The plaintiffs, however, claim support in the clause in Section 6292-2 which reads:

"The tax so levied shall become due and payable immediately upon the *occupancy for human habitation* of the house trailer except as hereinafter provided." (Emphasis supplied.)

This clause, in our judgment, can not be construed as a grant of an unlimited privilege to use the trailer for human habitation in one location. It merely fixes the time when the tax becomes due and payable. In fact, the section clearly recognizes the usual conception of house trailer occupancy as being transitory and the probability that the trailer will be moved from one county to another, thus necessitating the provision that the receipt for the payment of the tax must be recognized by the officials of any county to which the trailer is moved.

It is manifest that the tax prescribed by Section 6292-2 is in the nature of a property tax and not a license fee for the privilege of occupying a house trailer.

This leaves for consideration only section 7 of the ordinance which limits the right of occupancy in a trailer park to 60 days and forbids occupancy there or elsewhere in a trailer camp within the same municipality until the elapse of another 90 days. The statutes contain no provision in the nature of a time limitation on the use of a trailer camp as a location for a house trailer. As to that subject the statute is silent. Any provision limiting the time of occupancy within a trailer camp contained in the ordinance, therefore, can not be said to be in conflict with the statute.

We conclude that the city ordinance does not permit or provide for licensing that which the statutes forbid and prohibit, nor does it forbid or prohibit that which the statutes permit. The ordinance is not in conflict with the statutes and can not be successfully attacked upon that ground.

To test the validity of the 60-day and 90-day provisions in the ordinance, we must, then, determine whether they are arbitrary and unreasonable as having no direct relation to the public health, morals, safety or welfare.

In the earlier decision of this court—the *Renker case* —reference was made to *Cady* v. *City of Detroit,* 289 Mich., 499, 286 N. W., 805, in which a 90-day occupancy limitation was upheld. The plaintiffs cite a more recent Michigan case, to wit, *Richards* v. *City of Pontiac,* 305 Mich., 666, 9 N. W. (2d), 885, which was decided June 7, 1943, and which reaches an opposite conclusion. It was decided subsequent to the enactment of a statute not in force at the time of the previous decision of the Michigan court. The later decision is quoted as holding that, the state having entered the field of licensing tourist camps, additional fees can not be imposed by an ordinance and that a provision in an ordinance providing for a time limit for parking trailers in a trailer camp is void. That decision obviously is based upon the specific terms of the Michigan act, section 18 of which provides:

"This act shall be construed as an emergency act, for the public peace, health, and safety. There is a great shortage of habitable houses for defense workers and the trailer coach has become a necessity, and there is a great shortage and need of sanitary regulated trailer coach parks."

The decision recites the purposes and scope of the act and holds that it was intended to apply to house trailers as permanent dwellings. We do not consider the later Michigan decision applicable authority in the instant controversy.

The case of *Spitler* v. *Town of Munster*, 214 Ind., 75, 14 N. E. (2d), 579, 115 A. L. R., 1395, cited in the *Renker case* and in which a 30-day limitation for occupancy was upheld, appears not to have been disturbed by the Indiana court.

In *Gillam* v. *Board of Health of Saugus* (1951), 327 Mass., 621, 100 N. E. (2d), 687, the operators of a trailer coach park (trailer camp) petitioned for a writ of mandamus to compel the board of health to renew their license to operate the park. The regulations of the board prohibited occupancy of such a park for more than 90 days in any six months. For violation of that regulation renewal of the license was refused. This refusal was sustained and the regulation was held valid. The court said in part:

"The rule in question cannot be pronounced lacking in rational purpose. In other states similar rules have been held valid, as tending to prevent permanent occupation of dwelling places which do not conform to the requirements of building codes."

It is interesting to note that absolute prohibition of the use of trailer camps or parks has been seriously considered as a solution of the problem. At least one reported case arose out of the enactment of such ordinance. It is *Commonwealth* v. *Amos* (1941), 44 Pa. D. & C., 125, 30 Del. Co., 552. Although that ordinance was not sustained by the court, the problem of municipal regulation of trailer camps was recognized.

In the case of *Allinder* v. *City of Homewood*, 254 Ala., 525, 49 So. (2d), 108, 22 A. L. R. (2d), 763, injunction was sought to prevent enforcement of a comprehensive ordinance of Homeville (*sic*), Alabama, regulating tourist camps, tourist courts, motor courts and motels. It does not appear that the ordinance contained any provision limiting the term of occupancy. The decision does, however, announce several fundamental principles in harmony with those herein stated. It also refers to the claimed similarity of hotels and tourist courts (on which plaintiffs herein base an argument) and states that there are differences which justify regulations as to the one, which are not needed as to the other.

A comprehensive annotation with respect to trailer camps appears in 22 A. L. R. (2d), 774.

Because of the scarcity of authorities with respect to the specific question now under discussion we must rely largely upon general principles governing the exercise of the police power of a municipality. It has been vigorously argued in behalf of defendants that the use of trailer camps has grown far beyond the use originally conceived, and that the existence of unlimited permanent habitations of this character creates social problems and problems of health and government with which the municipal authorities must cope in a practical manner. The record in this case contains testimony that the house trailers in this particular camp in some instances are occupied by as many as six persons and that it is usual for families including children to occupy them. No playground equipment is provided. Common toilets are used to a large extent. Children have no privacy. The trailers are on the average no larger than an average size room in a house. Each trailer occupies an area about 25 feet by 44 feet in size.

In most instances the areas adjacent to a trailer park, and all other parts of a city, are so zoned and regulated that houses of such size can not be built. It is urged that to permit permanent occupancy of trailer camps is a discrimination against all the other citizens who are not permitted to build such structures or to occupy such limited quarters, and that permanent occupancy of trailer camps tends to create "slum districts." It is conceded that the purpose of the 60-day and 90-day limitations is to require the occupants to move periodically and thus to prevent permanent occupancy. It has been argued with considerable force that occupancy for 61 days or longer can not be detrimental to public health, morals, safety or welfare, if occupancy for 60 days is not detrimental. At first blush this argument seems to have much force. It is to be remembered, however, that the municipal authorities are faced with the necessity of action if permanent occupancy of such quarters creates problems of municipal government and tends to create slum districts. This problem is intensified by the increased use of house trailers as places of permanent abode. If the only practical means found to solve that problem is to forbid permanent occupancy it would seem to follow that the 60-day and 90-day regulations are not unreasonable or arbitrary and can not be said to be unrelated to the public health, morals, safety or welfare.

Legislation passed by the legislative body of a municipality can not be overthrown by the court unless such legislation is clearly arbitrary, unreasonable or unrelated to the public health, morals, safety or welfare. It is not for the courts to determine the wisdom of the legislation, but its constitutional validity, and a court will not substitute its judgment for that of the legislative body as to necessity for or wisdom of the legislation.

This is well stated in 28 Ohio Jurisprudence, 498, Section 303, as follows:

"• • • in the determination of the reasonableness of ordinances, a court will not substitute its judgment for the discretion of the municipal legislative authorities, who are presumed to be familiar with the local needs and conditions, so long as the provisions of such ordinance do not clearly transcend the limits of reasonableness."

That statement is based upon several decisions of this court, including *White* v. *Kent,* 11 Ohio St., 550; *Allion* v. *City of Toledo,* 99 Ohio St., 416, 124 N. E., 237, 6 A. L. R., 426; *Pritz* v. *Messer,* 112 Ohio St., 628, 149 N. E., 30; *City of Dayton* v. *S. S. Kresge Co.,* 114 Ohio St., 624, 151 N. E., 775, 53 A. L. R., 916.

We find no valid ground for overriding the judgment of the legislative body of Brooklyn with respect to this ordinance. In our judgment the ordinance is valid and enforceable.

The judgment of the Court of Appeals is affirmed.

*Judgment Affirmed.*

WEYGANDT, *C. J.*, TAFT, ZIMMERMAN and LAMNECK, *JJ.*, concur.

STEWART, *J.*, concurs in paragraphs one, two, three, four and five of the syllabus, but dissents from paragraph six of the syllabus and from the judgment.

HART, *J.*, dissenting. The Brooklyn city ordinance provides that no person may maintain a trailer camp within the municipality without first securing a trailer camp license from the mayor for which the applicant must pay $25 for the license period of one year, without reference to the trailer capacity of the camp.

Section 7 of the ordinance provides:

"It shall be unlawful for any person to park or *occupy a trailer* in a trailer camp *for more than sixty days,* and no trailer camp licensee shall permit a trailer or *occupants thereof to remain in a trailer camp for more than sixty days;* nor shall a *trailer licensee permit* a trailer *or the occupants thereof to re-enter the trailer camp for ninety days after the expiration date of a former occupancy;* and it shall be unlawful for the occupants of a trailer *to park or occupy a trailer in any trailer camp for ninety days after the expiration date of a former occupancy in any other trailer camp* within the village limits." (Italics supplied.)

The questions here in issue are whether the city of Brooklyn has the power to enact and enforce the ordinance in question, and whether a municipal ordinance is a constitutional exercise of legislative power, which ordinance makes it unlawful for any person to park or occupy for more than 60 days a house trailer in a trailer camp located within the municipality until he has absented himself with his trailer from such trailer camp and all other trailer camps in such municipality for a period of 90 days after the expiration of such 60-day period, and which makes it unlawful for a trailer camp

licensee in such municipality to permit a trailer or its occupants to remain in his trailer camp for more than 60 days or to re-enter his camp for a period of 90 days after the expiration date of a former occupancy in his camp.

Under its general powers a municipal corporation may regulate by ordinance the *use, control, repair and maintenance* of buildings used for human occupancy or habitation, the number of occupants, and the mode and manner of occupancy; may compel the owners of such *buildings* to alter, reconstruct or modify them, or any room, store, compartment, or part thereof; and may prohibit the use and occupancy of such *buildings* until such rules, regulations and provisions have been complied with. See Section 3639, General Code (Section 715.29, Revised Code). Under its general powers, a municipal corporation may also provide for the collection and disposal of sewage, garbage, ashes, animal and vegetable refuse, dead animals and animal offal (see Section 3649, General Code [Section 715.43, Revised Code]); and may abate any nuisance, regulate or prevent the emission of smoke, prevent injury and annoyance from any nuisance, regulate or prohibit the use of steam whistles, and regulate the installation and inspection of steam boilers and steam boiler plants. See Section 3650, General Code (Section 715.44, Revised Code).

A municipal corporation, in addition to its general powers, is granted a number of specific powers, none of which, however, relate to the subject matter here to be considered. See Section 3939, General Code (Section 717.01, Revised Code.) Although the Municipal Code grants power to a municipality to license certain activities and businesses, no general or specific power is granted

to license or regulate house trailer parks, as such, within the corporate limits.

On the other hand, general sanitary and public health matters, including the regulation of trailer parks, are delegated and entrusted to another branch of state government and through it to units of local government. Section 1234, General Code (Section 3701.33, Revised Code), provides for a state board known as the Public Health Council which consists of seven members appointed by the Governor for terms of seven years. The powers and duties of this "council" are to make and amend sanitary regulations of general application throughout the state, which body of regulations is known as the "sanitary code." See Section 1235, General Code (Section 3701.34, Revised Code). Every regulation adopted by the Public Health Council shall state the date on which it takes effect, and copies thereof shall be filed in the office of the Secretary of State and sent by the director of health to each board of health within the state and shall be published in such manner as the state council may determine. By statute, every provision of the sanitary code shall apply to and be effective in all portions of the state. See Section 1236, General Code (Section 3701.35, Revised Code).

By statute, the state is divided into health districts. Each city constitutes a health district known as a *city health district.* Townships and villages of each county are combined into a health district known as a *general health district.* See Section 1261-16, General Code (Section 3709.01, Revised Code). The board of health of a city health district, appointed by the mayor of the city to act on behalf of the city government, may make such regulations as are necessary for the public health, prevention of disease and the prevention, abatement or sup-

pression of nuisances. All orders and regulations of the board of health, not for its government but intended for the general public, shall be adopted, recorded, published and certified as ordinances of the municipal corporation. See Section 1261-42, General Code (Section 3709.21, Revised Code). The board of health of a city or city health district shall abate and remove all nuisances within its jurisdiction. It may, by order, compel owners or occupants of any lots or property to abate and remove any nuisance thereon. When premises, business pursuit, matter or thing is, in the opinion of the board, a condition dangerous to life or health, it may declare it a public nuisance and order it to be removed, abated, suspended, altered or otherwise improved. See Sections 4420 and 4421, General Code (Section 3707.01, Revised Code).

On May 3, 1951, the General Assembly took cognizance of the matter of house trailer parks by legislative enactment, effective August 8, 1951, which provides that the state Public Health Council, herein referred to and described, may make regulations of general application throughout the state governing the location, layout, construction, drainage, sanitation, safety and operation of *house trailer parks.* See Section 1235-1, General Code (Section 3733.02, Revised Code). The General Assembly provided further for a system of house trailer park licenses. On or after the first of December, but before the first of January of the next year, every person who intends to operate a house trailer park shall procure a license to operate such park for such year, not from the mayor of the city but from the board of health of the district in which the park is located—in this case the board of health of the city of Brooklyn. See Section 1235.2, General Code (Section 3733.03, Revised Code).

The board of health of the district in which a house trailer park is located, representing the governmental au-

thority of its district, may charge an *annual* fee for the right to operate such park. Such fee includes the cost of licensing and all inspection and is fixed as follows: For parks having a capacity of less than 25 house trailers, not more than $15; for parks having a capacity of 25 or more trailers but less than 100, not more than $25; and for parks having a capacity of 100 or more trailers, not more than $35. See Section 1235-3, General Code (Section 3733.04, Revised Code). And the *board of health* of the district *may refuse to grant, may suspend or may revoke any license* for failure to comply with regulations adopted by the Public Health Council. See Section 1235-5, General Code (Section 3733.05, Revised Code).

The license fees for house trailer parks received by a city board of health inure to the benefit of the city. They, together with fines imposed for the violation of the provisions of the health code, are paid to the city treasurer and are credited to the health fund. When expenses are incurred by a city board of health they are certified to the city and it becomes the duty of the legislative body of the city to pass the necessary appropriation to pay such expenses. See Sections 4451 and 4418, General Code (Sections 3707.28 and 3707.53, Revised Code).

With this legislative governmental setup, it is inconceivable that two licenses may be issued to and two license fees exacted from the owner or operator of a house trailer park by two different branches of the same unit of local government—the board of health and the city council or mayor—for the operation of the house trailer park within its territorial limits, especially since the General Assembly by legislative enactment placed a limit upon the license fees for the operation of house trailer parks.

It is also to be noted that under this act providing for the regulation of house trailer parks, there is no limitation upon the stay of a house trailer in a trailer park. Indeed the inference is that it may remain as long as it is agreeable with the operator of the park and as long as the owner of the trailer complies with all the sanitary and health regulations.

On December 2, 1951, the Public Health Council of this state, pursuant to the statute above referred to, adopted regulations for house trailer parks, which are known as regulations 260 to 290, inclusive, all of which became effective December 17, 1951. These regulations, which are equivalent to state statutes, cover the subject of licenses to operate house trailer parks in accordance with the terms of the statute, approval of plans and layouts for such parks, water supply, plumbing facilities, and sewage, garbage and other refuse disposal, fire protection and supervision. In this elaborate code of regulations, relating to the location, occupancy and operation of house trailer parks, there is no provision limiting the time of occupancy by any trailer in a trailer park.

In my opinion, the General Assembly, by the adoption of the legislation above referred to, has granted to the Public Health Council and the district boards of health of the state exclusive power and jurisdiction to license house trailer parks and to regulate the same through sanitary and health measures adopted by their authority, and the councils of cities have no such power or jurisdiction.

In the case of *Richards* v. *City of Pontiac* (1943), 305 Mich., 666, 9 N. W. (2d), 885, the Supreme Court of Michigan held invalid an ordinance limiting the parking of occupied trailers in a trailer camp to a period not to exceed three months in any twelve months. The court

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held further that the state by the enactment of appropriate legislation permitted unlimited parking of trailers; that the state law also provided for license fees and their allocation to various governmental units; that the ordinance in fixing a time limit for the parking of trailers conflicted with the state regulations and was void; and that, the state having entered the field of licensing trailer camps, any provision for additional fees, imposed by an ordinance for such licensing, was also void.

Furthermore, the ordinance in the instant case is, in my opinion, void because it is, in several vital respects, in conflict with state legislation. The mayor of Brooklyn has no power to grant a house trailer park license or collect the license fee because the city is the beneficiary of the fee for a license granted under a state law through the city board of health. The license fee of $25 per year under the ordinance, without regard to the trailer capacity of the park, is in conflict with that prescribed by state law, in that section 4A of the Brooklyn ordinance requires only 875 square feet to each lot in the trailer park, whereas regulation No. 267 of the state Public Health Council requires 1,250 square feet of land for each trailer lot. The penalty for the violation of the provisions of the Brooklyn house trailer park ordinance, to wit, not less than $25 nor more than $49 for each offense, is in conflict with the penalty provided for such violations under the state law, to wit, not more than $100 or imprisonment for not more than 90 days, or both. See Section 1235-4, General Code (Section 3733.99, Revised Code). In fact, the Brooklyn ordinance can not be enforced by penalty in a single instance, without coming in conflict with the state statute as to penalty—the penalty for violation under the ordinance being not less than $25, whereas under the state law it may be any lesser sum up to $100.

It is fundamental law that if a municipal ordinance has no reasonable relation to the morals, health and safety of the people of the municipality, it is invalid as an unauthorized exercise of the police power. 37 American Jurisprudence, 927, Section 288, citing *City of Youngstown* v. *Kahn Bros. Bldg. Co.*, 112 Ohio St., 654, 148 N.E., 842, 43 A. L. R., 662; and *McConnell* v. *City of Knoxville*, 172 Tenn., 190, 110 S. W. (2d), 478, 113 A. L. R., 966.

This court, as well as other courts, has held that, although a state or municipality may make all reasonable, necessary and appropriate provisions to promote the health, morals, peace and welfare of the community, such provisions must not be unreasonable; and that the means adopted must be suitable to the end in view, must be impartial in operation and not unduly oppressive upon individuals, must have a real and substantial relation to their purpose, and must not interfere with private rights beyond the necessities of the situation. *Froelich* v. *City of Cleveland*, 99 Ohio St., 376, 124 N. E., 212; 8 Ohio Jurisprudence, 358, 359, Section 250; *Wondrak* v. *Kelley*, 129 Ohio St., 268, 195 N. E. 65; *Nebbia* v. *New York*, 291 U.S., 502, 78 L. Ed., 940, 54 S. Ct., 505.

In the case of *Town of Southport* v. *Ross*, 109 N. Y. Supp. (2d), 196, the court held that the provisions of an ordinance of Southport prohibiting the location of a house trailer on private property for more than four weeks did not have any reasonable relation to the common good of the community, where the trailer had facilities equal or superior to those required of house trailers located in trailer camps in the community; and that the ordinance provision did not have any reasonable relation to the health, safety, or welfare of the community, and was invalid. To the same effect, see *Richards* v. *Pontiac*, *supra*.

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In the instant case, the ordinance requires each occupant of a trailer, under severe penalty, to move from his rented lot or park space and out of the park after 60 days of occupancy. Thereafter, he is not permitted to park in this or any other trailer park in the city of Brooklyn until after a period of 90 days. He is not even permitted, during this 90-day period, to go back to the park as a resident in a trailer which has a right of occupancy, without being subject to arrest under this ordinance. In the meantime, any other trailer and its occupants, regardless of how much less desirable they may be, may move into the same space or parking lot for 60 days, and still another may do the same for a period of 30 days, after which the original trailer and the same occupants who have been exiled from the city for 90 days may return to the very same location and remain in the park under the same conditions as upon the former occupancy for another period of 60 days when they must again move out. In other words, the same space or lot may be occupied by a trailer continuously, but the occupancy must be by a different trailer and different occupants every 60 days. These facts, in my opinion, make it clearly apparent that the purpose of the ordinance has no relation to the health and welfare of the community.

## APPENDIX B

Copy of Judgment of the Supreme Court of Ohio from which this appeal is taken. (R. 106-107)

Wednesday, July 7, 1954

Journal No. 41, page 261

APPEAL FROM THE COURT OF APPEALS FOR CUYAHOGA COUNTY:

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Cuyahoga County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same hereby is, affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

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## APPENDIX C.

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**Brooklyn Village, Ohio,**
**Ordinance No. 1940-13**

An Ordinance Regulating Trailers and Trailer Camps Within the Limits of the Village of Brooklyn, Ohio, and Providing For the Licensing of Trailer Camps.

Be It Ordained By the Council of the Village of Brooklyn, County of Cuyahoga, and State of Ohio:

Section 1 (a) The term "trailer" as used in this ordinance is hereby defined to be a trailer, or house car, or camp car, or any vehicle or structure mounted on wheels or capable of being propelled from place to place either by its own power or power supplied by some vehicle attached thereto, and being used for living or sleeping quarters.

(b) The term "Trailer Camp" as used in this ordinance is hereby defined as any lot or parcel of ground within the limits of the Village of Brooklyn, Ohio where accommodation is provided for one or more automobile trailers or house cars used as living or sleeping quarters.

Section 2 It shall be unlawful for any person, firm, corporation, or partnership, owning or leasing land within the limits of the Village of Brooklyn to permit, place, keep or maintain a Trailer Camp as hereinabove described within the Village limits without first having obtained a Trailer Camp license from the Mayor of Brooklyn Village; the application for which license shall be signed by the applicant and shall state the street, street number of the premises occupied, the name and permission of the owner or responsible occupant of said

premises and such other information as the Mayor may require. That upon receipt of an application in writing, the Mayor is hereby ordered to conduct a detailed inspection of said Camp and require the applicant to comply with the requirements and regulations set forth herein, and also all requirements and regulations set forth in the building, fire and sanitary codes of the Village of Brooklyn.

Section 3 The Mayor of Brooklyn Village shall issue or cause to be issued a Trailer Camp license to said applicant when the regulations set forth herein and also all building, fire and sanitary regulations of Brooklyn Village have been complied with; that the applicant shall be required to pay a license fee of $25.00 and said license shall be for a period of one year from August 1st of the year of the issuance to July 31st of the next succeeding year, and the fee for such license shall not be prorated for any lesser period than one year.

Section 4 It shall be the duty of any person, firm, partnership of corporation conducting a Trailer Camp to maintain the same in a safe and sanitary condition at all times and subject to the following regulations, to-wit:

(a) The Trailer Camp site shall be of adequate area and each unit reserved for the accommodation of any automobile trailer or house car shall be not less than twenty-five feet by thirty-five feet and shall be clearly defined by proper markers at each corner. The site shall be level, free from rocks and weeds and well-drained. No trailer or house car shall be located on any unit where there is less than ten feet between each trailer or house car and other buildings, trailers, house cars or other structures, or within ten feet from the property line separating the park or camp from adjoining properties.

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(b) Each Trailer Camp shall be supplied with pure and wholesome running water.

(c) All drain water from drives and roofs shall be properly tiled to a storm or sanitary sewer, and drain water shall not be permitted to collect upon the premises nor drained to adjoining property.

(d) A covered metal garbage pail and a covered metal rubbish container shall be provided for each four or less units and shall be of such capacity as to properly take care of all garbage and rubbish emanating from the units intended to be serviced; and all garbage shall be wrapped in paper before same is placed in a metal container.

(e) No garbage refuse nor sewerage or waste shall be dumped upon the premises or any adjoining property.

(f) Each site for which a Trailer Camp license is obtained shall be provided with toilets, urinals, wash basins, showers or baths, water faucets, etc., in accordance with the following specifications:

(1) The Trailer Camp shall be provided with adequate and proper toilet facilities, comprising water flushed plumbing equipment connected to a sanitary sewer; and separate toilet facilities provided for each sex. The use of chemical toilets or privies shall be prohibited, and each Trailer Camp shall provide not less than one water flushed toilet for each sex for every ten units or fraction thereof.

(2) Each toilet room provided for men shall have, in addition, one urinal stall.

(3) Each toilet room shall be provided with one wash basin with running water for each three toilets.

(4) One shower or bath tub shall be provided for each sex for each ten units or fraction thereof.

(5) All toilets, sinks, showers, urinals, etc., shall be placed in properly constructed buildings located not more than 150 feet from each trailer unit which they are supposed to service.

(6) Toilet buildings shall be well lighted at all times, day or night, well ventilated with screened openings and constructed of such moisture-proof material as shall permit rapid and satisfactory cleaning, scouring and washing.

(7) The floors shall be of concrete or similar material, elevated not less than four inches above grade and shall slope to a floor drain located in each room.

(8) One slop sink or basin with water supply shall be provided to serve each four trailer units and shall be constructed in accordance with design, size and material approved by the Building Inspector of Brooklyn Village.

(9) Where toilet and bathing facilities are provided for both sexes in the same building, a tight, soundproof wall shall be constructed between the male and female sections.

(g) Waste cans for emergency toilet use shall be prohibited in any and all trailers.

(h) All trailers using gas, kerosene, gasoline or fuel oil for heating or cooking purposes shall have their stoves properly vented together with flues of adequate size and construction; and with the exception of a supply container for each trailer, no gasoline, kerosene or fuel oil shall be stored on the premises, and said supply container must be approved by the Village Fire Chief.

(i) All trailers shall be maintained in a portable condition (on wheels) at all times.

(j) Each Trailer Camp shall be under the direct management of the owner, or licensee, or his agent or

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representative. Such person or persons must be of good reputation and character and shall operate such camp from an office located on the grounds, in which office shall be maintained registration records; and there shall be displayed in such office the license for that particular camp. It shall be the duty of the manager of each Trailer Camp:

(1) To prohibit the placing or storage of unsightly materials or vehicles of any kind on the premises.

(2) To provide for the regular cleaning, painting, repairing and disinfecting of all buildings.

(3) To take such other measures as may be deemed necessary by the officials charged with the enforcement of this ordinance to preserve the health, comfort and safety of all persons residing in the camp and of the general public.

(4) Shall cause each dog, cat or other pet animal to be kept under control either by being tied up or confined in a proper enclosure.

(5) Shall report to the Village officials all cases of communicable diseases or suspected cases of communicable diseases affecting any inmate of the camp.

(6) Shall prevent the committing of any nuisance on the camp premises and shall report immediately to the proper authorities all acts of a disorderly character committed by any person or persons inside of the camp.

(k) There shall be provided by the management of the Trailer Camp a suitable number of portable fire extinguishers on a central location within the Trailer Camp, and said fire extinguishers shall be subject to the approval of the Village Fire Chief.

(l) All entrances and exits from the Trailer Camp shall be well marked and so arranged that they will not

constitute a traffic hazard. All driveways within the Trailer Camp shall be hard surfaced, and well marked in the daytime and lighted in the night, and so located that each unit of the camp is easily accessible.

Section 5 No licenses shall be granted for the construction or operation of a Trailer Camp in violation of the Zoning or other ordinances of the Village of Brooklyn.

Section 6 It shall be mandatory for the manager or caretaker of a duly licensed Trailer Camp to provide a duplicate registration book and keep a complete daily record in duplicate of the names and addresses of the occupants of each trailer admitted to the Trailer Camp site, the automobile license and the trailer license numbers; and the manager or caretaker of said Trailer Camp shall turn over each day to the Marshal of Brooklyn Village a duplicate copy of all registrations and entries for the previous day.

Section 7 It shall be unlawful for any person to park or occupy a trailer in a Trailer Camp for more than sixty days, and no Trailer Camp licensee shall permit a trailer or occupants thereof to remain in a Trailer Camp for more than sixty days; nor shall a trailer licensee permit a trailer or the occupants thereof to re-enter the Trailer Camp for ninety days after the expiration date of a former occupancy; and it shall be unlawful for the occupants of a trailer to park or occupy a trailer in any Trailer Camp for ninety days after the expiration date of a former occupancy in any other Trailer Camp within the Village limits.

Section 8 It shall be the duty of the Village Marshal to conduct a daily inspection of each Trailer Camp site and obtain from the manager thereof a duplicate copy of the previous day's registrations and to ascertain whether

the occupants of any unit overstay the sixty-day period designated in Section 7 hereof.

Section 9 The Mayor, Building Inspector, Fire Chief and all law enforcement officers of the Village shall have access to each Trailer Camp at all reasonable times to inspect the same and ascertain whether this ordinance is being complied with; and whenever any person, firm, partnership or corporation conducting a Trailer Camp is not maintaining same in a safe or sanitary condition, or contrary to the requirements and regulations set forth in the building, fire and sanitary codes of Brooklyn Village, or contrary to the requirements and regulations set forth in this ordinance, it shall be the duty of the Mayor with the approval of the Village Council to revoke the Trailer Camp license.

Section 10. Whoever violates any section of this ordinance shall upon conviction be fined not less than $25.00 nor more than $49.00 for each offense; and each day's violation shall constitute a separate offense.

Section 11 Each section or parts thereof, are hereby declared to be independent sections and parts of sections and the holding of any section or part thereof, or the application to any person or circumstances to be invalid or ineffective, shall not affect any other section or part thereof or the application of any section or part thereof to other persons or circumstances.

Section 12 This ordinance is an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such emergency lies in the fact that unless regulated, trailers and Trailer Camps constitute a serious menace to the public health and peace. This ordinance shall, therefore, go into immediate effect upon its passage.

Passed: July 8, 1940.

## APPENDIX D.

Excerpts from articles published in (1) Housing Research, April 1954; (2) The Wall Street Journal, issue of October 5, 1954; (3) Financial World, issue of August 26, 1953; and (4) Newsweek, issue of August 25, 1952.

1. Housing Research, a government publication of the Housing and Home Finance Agency, issue No. 7, April, 1954, pages 47-60, contains the report of a research project entitled "The Construction Worker and Trailer-Living in Bucks County, Pa." prepared by the Institute for Urban Studies, University of Pennsylvania. The following excerpts are from pages 48-49:

> "These observations bring us to a third factor in the increased production and use of trailer housing. For over a quarter of a century, the Nation has witnessed a phenomenal increase in the demand for the small-apartment type of dwelling unit. The modern house trailer, therefore, fits neatly into this dominant trend and, by comparison, the house trailer is often more comfortable and conveniently arranged than the small apartment being offered in many urban areas today. Given the fact of conditions of employment, plus the desire of the worker to have his family with him, a circumstance was created whereby pressures were brought to bear on the manufacturers of house trailers to design and produce trailers which would approximate the plan and appearance of the small fixed house.
>
> "A fourth factor in the rapid development of trailer housing, particularly as it has developed from the demands of the mobile construction worker and his family, is the reluctance of some landlords to rent their properties to so-called 'temporary' tenants, and the frequent refusal to accept tenants who have

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children. Many landlords are suspicious of the mobile worker and tend to classify him as a dubious community asset. The skilled worker reacts strongly to these sentiments and, in this respect, the house trailer permits him to avoid this unpleasantness and to retain a sense of pride and independence.

"During the late 1930's many house trailers were home-made, and factory-built trailers rarely exceeded 27 feet in length. And since at that time about one-half of the trailer population was composed of families enjoying their annual vacation, there was no necessity to view the trailer as a home nor to insist that it offer every modern convenience. At the present time, there are over 500 manufacturers of house trailers; and the length of trailers now ranges from 27 to 50 feet, with the 34-, 40-, and 43-foot models being the most popular choices for families made up of more than two persons. Modern kitchens, complete bathroom facilities, central heating, and air conditioning are commonplace in modern trailer design. Correspondingly, the cost of trailers has risen. The current price range runs from about $2,500 to $25,000. The cost of the 43-foot model (two bedrooms) often encountered in this study, tends to range between $5,500 and $7,000.

"It is obvious that marked changes have been made in the design and structure of the modern house trailer. Perhaps the principal trend in trailer design has been the gradual elimination of the dependent trailer, *i. e.*, the old-style trailer which had to depend on trailer-park installations for toilet and bath facilities. Modern trailers are generally designed to function independently of trailer-park facilities, so long as there is some kind of a water supply avilable. Trailer-park operators (particularly those who want to avoid, if possible, a heavy financial investment in this type of facility), generally prefer the independent trailer, although many trailer parks are equipped to handle both types of trailers. Small or newly

opened trailer parks frequently restrict the type of trailer admitted to only those with toilet and shower facilities. Small and medium-sized trailer parks in boom areas can afford the luxury of this type of restriction, and thus reduce the cost of initial investment."

2. In The Wall Street Journal, issue of Tuesday, October 5, 1954, the following excerpts are from a page one article:

"Most trailer park guests are not one-night stopover folks. About 83% of all trailers are the commodious mobile homes designed primarily for semi-permanent park use, with only occasional moves. The rest, so-called travel trailers, are less lavish and are built for more road use.

"Most park operators like to observe that trailer families are just like the Joneses up the street. In fact, with an annual income of something like $4,700, the average trailer family probably has the edge if Mr. Jones earns anywhere near the U. S. average of $3,600 per year. An industry survey of 1,000 trailer buyers this year revealed that about 25% are 'craftsmen,' some 20% are laborers, and retired folks account for 10% of the buyers. Out of every 20 purchasers, three are in the armed services, the survey indicated."

• • •

"Nationally, the expected dip in the trailermaking industry's dollar sales volume this year follows an increase of $1.4 million last year to a record $321.4 million, and a succession of much larger jumps in earlier post-war years. The peak in unit output was reached in 1952 with production of 83,054 mobile homes; 1953 output was 76,889, estimated 1954 output is about 70,000."

• • •

"The mobile homes, like the trailer parks, have risen far above pre-World War II levels in terms of

quality. Construction standards have been raised and tightened by manufacturers' associations, and in contrast to the rickety plywood and pressed-board contraptions of yesteryear, today's units are built on steel frames, with aluminum or sheet steel exterior and interior paneling of natural finish hardwoods in most models.

" 'We're selling a completely furnished home,' says one maker whose trailers come off the assembly line with wall-to-wall carpeting, furniture, venetian blinds and drapes as well as standard accessories."

• • •

"But while demand for larger trailers is increasing, some state laws hamstring movement of the giants. Length limits vary from 35 to 60 feet, and special permit requirements and other restrictions force many mobile-home owners to hire truck transport companies in some areas to move their trailers from one point to another."

3. Financial World, issue of August 26, 1953, contains an article entitled "House Trailers Set New Living Patterns" from which the following excerpt is taken:

"Sales of trailer coaches are mounting to substantial figures. Last year more than 83,000 mobile homes were sold, an increase of 25 per cent over 1951. And retail dollar volume reached a peak of some $319.9 million, up 28 per cent from the previous year, while both unit and dollar volume have continued to increase this year.

These figures are all the more impressive when compared with prewar demand and growth in the immediate postwar years. Back in 1930 the house trailer was something of a curiosity and only about $1.3 million worth were sold. Purchasers were mostly retired people, or pioneers in vacation ideas. Growth through the 1930s was mainly due to increased use by vacationers, many of them well-to-do sportsmen who could afford special equipment. The principal

impetus behind the industry since the war, however, has come from persons interested in temporary housing or engaged in a mobile occupation, such as military personnel and defense and construction workers.

For those who must find their way to remote plant sites and obtain suitable accommodations near their work, mobility is a necessity. The Trailer Coach Manufacturers' Association points out that many contractors will not hire a family man who does not own a trailer coach home. On the other hand, some large builders frequently provide attractive trailer parks to retain skilled employes on the job. Such workers as a rule are paid high wages and receive steady employment. Average annual wage reported for this group exceeds $6,000.

The largest segment of coach trailer users, therefore, comprises production workers although the number of retired people using them has increased several times over during the last 15 years. Another group of trailer owners is made up of those who use them more or less temporarily for the sake of "trailer life." Many of these people explore the country in a trailer and then settle down in a permanent home. Accompanying the mushroom growth of the industry and the boom in trailer camp sites is an increase in essential services using mobile transportation—medical and dental offices, sales display units, grocery stores, branch banks, sanitary units, restaurants, laundries, tailor shops, and even schools. It is estimated that there now are about two million persons living in approximately 700,000 of these houses on wheels.

About 85 per cent of families living in trailer homes use them for year-'round living, and trailer parks have been growing at the rate of more than 1,000 new locations each year with the total now over 8,000. Biggest concentrations are in Florida,

which has over 600, and in California which has even more. It is true that trailer villages bring with them problems of garbage disposal, police protection, utility services, safe water supply and zoning, so that many communities do not want them. But where suitable locations are found, trailer parks can be an asset from a tax standpoint. At Milford, Conn., for example, land assessed for $3,300 before a trailer park was established is now rated at $178,372, while the owner's tax bill is $1,900 and the trailer occupants pay approximately $6,000 in personal property taxes each year. Costs of educating the 14 children sent to the local schools from the park last year was estimated at $200 each, or $2,800 in all, which compares with the total tax bill of $7,900.

A trend toward larger coaches is bringing on the road more units as long as 40 and even 45 feet and accommodating five or six people. Last year, about 75 per cent of all mobile homes sold were 30 feet or longer compared with 69 per cent in 1951 and only 17 per cent in 1948. Many are equipped with built-in television, automatic dishwashers, washing machines and air-conditioning. Some even have telephone service. An increasing number of tub and shower combinations, rather than showers only, are in evidence. Floors are carpeted, and some have richly paneled walls.

4. In Newsweek issue of August 25, 1952, appears an article under the heading "Trailers: More and More Americans Call them Home", from which the following is an excerpt:

"The sixth largest city in the United States is on wheels." That's the boast of the mushrooming, billion-dollar trailer industry. Spokesmen point out that the total number of people living in mobile homes is exceeded by the populations of only five cities. Newsweek's business editors here present a special report on this important aspect of the American scene—the

types of trailers, the kind of people who own them, their living and buying habits, and the economic implications of this growing market.

The other day a 1951 Chrysler sedan towing a shining, aluminum-sheathed bungalow-on-wheels pulled up at the Daniel Tratel, a trailer park outside Santa Monica, Calif. Out stepped the occupants, a middle-aged couple from the Midwest. After registering for an indefinite stay at the park, the husband explained to a NEWSWEEK reporter just why he and his wife had come to prefer a mobile home: "The Missus here, her health wasn't too good. I thought the best way was to get a trailer." For the past two years, he added, they had been living here and there in Nevada where the husband found work at his trade of welder whenever he wished.

Scenes like this were repeated countless times last week all over the U.S. For today, about 1,850,000 Americans are living in some 740,000 trailers. This mobile population is mounting at the rate of about 175,000 a year.

Behind these impressive statistics is a story of an equally impressive industrial growth. Just 21 years ago the trailer industry was nonexistent. Then in the early '30s, a number of vacationists who were using various types of luggage and tent trailers began to demand camping and outdoor shelter that offered them greater convenience and comfort. In depression-struck Elkhart, Ind., one time manufacturing center of buggies and carriages, civic leaders and businessmen were quick to size up the possibilities of a mobile market. From vacant carriage factories and former blacksmiths' shops came such pioneer trailers as the "Sportsman" (at $168) and the "Nomad" ($498). By 1939, countrywide sales—Southern California soon became another production center—hit the $10,000,000 mark.

During the second world war, however, the trailer industry got its real impetus. Some 45,000 units rolled

off production lines; the government promptly snapped up 35,500 for military and defense housing. Example: the prewar population of Orange, Texas, shot up from 7,400 to 50,000 as defense contracts poured into three local shipyards. The Federal government moved in 440 trailers and provided sites for another 300 privately owned ones.

After the war, the housing shortage was, if anything, even more serious. Accordingly, trailer sales boomed again: Dollar volume rose from $114,000,000 in 1946 to $248,000,000 in 1951. Indications are that this year the 150-odd firms making trailers will chalk up a record business of $284,000,000.

The Korean war and the resultant mobilization program have, of course, needled the current trailer market. House-on-wheel parks are going up daily around defense plants, aircraft production centers, and military installations. The Savannah River H-bomb plant near Aiken, S. C., supports nearly 3,000 trailer families; this is expected to increase to 10,000 by mid-1953. In Wichita, Kans., hundreds of Boeing Aircraft workers are trailer dwellers. Some 125 Navy families live in mobile homes at the Naval Training Center, Great Lakes, Ill.

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HAROLD B. WILLEY, Clerk

# In the Supreme Court of the United States

**OCTOBER TERM, 1954.**

## No. 464

EARL L. STARY, *et al.*,
*Appellants,*

vs.

CITY OF BROOKLYN, et al.,
*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF OHIO.

## MOTION TO DISMISS APPEAL
## and
## BRIEF IN SUPPORT OF MOTION.

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Cleveland 14, Ohio,
*Attorney for Appellees.*

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-6647

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ON APPEAL FROM THE SUPREME COURT OF OHIO.

## MOTION TO DISMISS APPEAL.

Now come the City of Brooklyn, *et al.*, appellees herein, by their attorney, Michael L. Hearns, and under Supreme Court Revised Rule 16, Section 1(b) move this Honorable Court to dismiss with costs the appeal taken to this Court by appellants for the following reasons:

1. No substantial Federal question is presented in this action.
2. The judgment rests on an adequate non-Federal basis.

The foregoing reasons are more fully set forth in the statement opposing jurisdiction included herein.

MICHAEL L. HEARNS,
802 Engineers Building,
Cleveland 14, Ohio,
*Attorney for Appellees.*

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# In the Supreme Court of the United States

**OCTOBER TERM, 1954.**

## No. .....

EARL L. STARY, *et al.*,
*Appellants,*

vs.

CITY OF BROOKLYN, *et al.*,
*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF OHIO.

## BRIEF IN SUPPORT OF MOTION.

### STATEMENT OPPOSING JURISDICTION.

This action was originally brought in the Common Pleas Court of Cuyahoga County, Ohio, on November 2, 1951, and the relief sought by the appellants herein was for a declaratory judgment, injunction and relief, which was denied and judgment was entered for the appellees herein. The Trial Court, in ruling for the appellees on October 14, 1953 (R. 38-40), found that "An Ordinance Regulating Trailers and Trailer Camps was a valid exercise of the police power and not in conflict with any State law." The judgment of the Trial Court is set forth in 114 N. E. (2d) 633. Thereafter the case was appealed to the Court of Appeals of Cuyahoga County on questions of law, which court affirmed the judgment of the Common Pleas Court without opinion on December 16, 1953 (R. 72-73) for the reasons set forth in the written opinion of the Trial Court. From the judgment of the Court of Appeals of Cuyahoga

County the appellants herein appealed on questions of law to the Supreme Court of the State of Ohio. On July 7, 1954 the Supreme Court of the State of Ohio affirmed the judgment of the Court of Appeals sustaining the validity of said ordinance (R. 74-92).

Without admitting the jurisdiction of the Supreme Court of the United States to review this decision by direct appeal, the appellees have filed under the Revised Rules of this Court, their Motion to Dismiss the Appeal from said court on the grounds that it does not present a substantial Federal question and the judgment rests on an adequate non-Federal basis.

## STATEMENT OF THE CASE.

The Agreed Statement of Facts in this case discloses that appellants herein own and operate the Ideal Trailer Camp, which has been in business at the same location in Brooklyn, Ohio, a suburb of Cleveland, since September 1939. The business consists of renting spaces, 25 ft. x 44½ ft., to individuals for the purpose of parking their automobiles and trailers thereon, with the use of the Trailer Camp, and toilet and sanitary facilities installed therein.

Many individual trailers are not equipped with toilet and shower facilities, and the occupants are compelled to use the public showers and toilet facilities provided by appellants' comfort buildings. The children residing in the Camp are required to use the same shower and toilet facilities as adults; and the comfort buildings are in some instances 200 ft. distant from the trailers parked in said Camp.

The average trailer in appellants' Camp is 25 ft. 9 inches in length by 8 ft. in width, outside dimensions, having an inside floor area of less than 200 square feet per family.

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The City of Brooklyn provides appellants' Camp together with the residents thereof, with all facilities provided citizens residing in permanent dwellings, which facilities include fire and police protection, health inspection, school facilities, school bus transportation, *et cetera*.

The zoning ordinance of the City of Brooklyn requires a minimum of 6,000 square feet of lot area for a single family dwelling and also requires a minimum floor area of 700 square feet in addition to a basement or utility room having an area of not less than 120 additional square feet. That on July 8, 1940 the then Village of Brooklyn adopted Ordinance No. 1940-13 which is entitled "An Ordinance Regulating Trailers and Trailer Camps and providing for the licensing of Trailer Camps" which was subsequently amended, and as finally amended is fully set forth in appellants' Jurisdictional Statement as "Appendix C," pages 27a-33a.

That Henry G. Renker, the former owner of appellants' Trailer Camp in the City of Brooklyn, questioned the constitutionality of this entire Trailer Camp Ordinance in the Common Pleas Court of Cuyahoga County in the year 1941 and said court upheld the entire ordinance and found that it did not conflict with any section of the Ohio constitution or the Constitution of the United States, and that the provisions of said ordinance were a valid exercise of the police power. In the year 1941 an appeal was taken by Henry G. Renker to the Court of Appeals of Cuyahoga County, Ohio, and said court unanimously affirmed the rulings of the Trial Court, upholding the constitutionality and validity of said Trailer Camp Ordinance. In the same year Henry G. Renker appealed to the Supreme Court of the State of Ohio, which upheld the constitutionality of said Trailer Camp Ordinance and affirmed the decrees of

the lower courts in a written opinion in the case of *Renker vs. Village of Brooklyn*, 139 O. S. 484.

## QUESTIONS PRESENTED.

1. Does Section 7 of the Ordinance of the City of Brooklyn regulating trailers and trailer camps constitute a valid and reasonable exercise of the police powers?

2. Does the appeal present a substantial Federal question?

3. Does the judgment rest on an adequate non-Federal basis?

## DISCUSSION.

Throughout the entire argument presented by the appellants (pages 6 to 16 of their Jurisdictional Statement), they endeavor to convey the impression that the average trailer is and should be treated as a modern, permanent home, when, as a matter of fact it is a mobile form of shelter and suitable only for temporary or emergency use. To support their contention appellants have cited State statutes which permit transients the right to vote after 30 days' residence, and also cite a number of laws of various states which contain simple regulations for the operation of a trailer camp.

Appellants' arguments throughout their Jurisdictional Statement refer to the 60-day limitation of Section 7 of the Brooklyn Ordinance, which they maintain has the effect of evicting permanent residents, but they fail to take into consideration the fact that the individual trailer owner is merely renting trailer space in a trailer camp on a month-to-month basis, and is at the mercy of the camp owner and subject to eviction by him at the end of each 30-day period.

To further support appellants' contention and argument they have erroneously or improperly inserted in their Jurisdictional Statement "Appendix D," pages 34a to 41a, excerpts from articles published in the Housing Research, The Wall Street Journal, Financial World, and News Week, under the dates of 1953 and 1954, all of which publications were printed after this case was determined in the lower courts; and these articles constitute new evidence not in the record of the case.

**1. Does Section 7 of the Ordinance of the City of Brooklyn regulating trailers and trailer camps constitute a valid and reasonable exercise of the police powers?**

Although the entire ordinance of the City of Brooklyn, regulating trailers and trailer camps, was contested by the appellants in the lower courts as an unreasonable and arbitrary exercise of the police powers, they have confined their attack in this Court to Section 7 only, which reads as follows:

> "SECTION 7. It shall be unlawful for any person to park or occupy a trailer in a Trailer Camp for more than sixty days, and no Trailer Camp licensee shall permit a trailer or the occupants thereof to remain in a Trailer Camp for more than sixty days; nor shall a trailer licensee permit a trailer or the occupants thereof to re-enter the Trailer Camp for ninety days after the expiration date of a former occupancy; and it shall be unlawful for the occupants of a trailer to park or occupy a trailer in any Trailer Camp for ninety days after the expiration date of a former occupancy in any other Trailer Camp within the Village limits."

In their Jurisdictional Statement, appellants recognize the necessity for regulations of trailer camps, and that the location of a trailer camp within a municipality presents

various problems in connection with governmental regulations and services.

It is to be noted that municipalities throughout the various states have the power granted by State legislatures and State constitutions to adopt reasonable regulations involving building codes, zoning ordinances, *et cetera*, but have no express authority to regulate the size or construction of a trailer (vehicle). The City of Brooklyn Zoning Ordinance, which has been made a part of the Agreed Statement of Facts, provides for a minimum of 700 square feet of floor area for the smallest single family dwelling together with a utility room of 120 additional square feet, while the average trailer in appellants' Trailer Camp has an inside floor area of less than 200 square feet. The Zoning Ordinance of said municipality also requires for a single family dwelling, a minimum lot area of 6,000 square feet and an average minimum width of 55 feet. The trailer spaces in appellants' camp are 25 ft. x 44½ ft., making a total of approximately 1,113 square feet. The Agreed Statement of Facts further discloses that many of the trailers are not equipped with toilet and shower facilities and that the occupants thereof are required to use the comfort buildings provided by the camp, which in some instances are located 200 ft. distant from the trailer; and that there are as many as six individuals living in an average trailer. To determine whether or not the City has the right to declare that a trailer is not a satisfactory, permanent home, it is necessary to analyze the effect on the city as a whole, as well as on the residents of the trailer camps, if people were permitted to reside there permanently. Some of the reasons might be listed as follows:

(a) Living conditions for children in trailers are not conducive to their best interest.

(b) Children have no opportunity to visit and play in homes with other children.

(c) Children have no privacy.

(d) Children lack the requisites to live their leisure hours in a normal way.

(e) Children are obliged to be outside their homes most of the time and such conditions prevent proper parental supervision.

(f) Social problems created by crowded quarters, particularly when children are required to live with adults at such close proximity.

(g) Children will acquire a precocious knowledge of sex matters.

(h) Potential danger to morals in common use of toilets and bathing facilities by members of the same sex of different ages.

(i) Difficulty on the part of City officials to provide adequate school and playground facilities for children in trailer camps.

(j) Transitory residence, without any plan of permanency, is contrary to public policy and to the interests of the City.

(k) Regardless of compliance with ordinance by an owner of camp of sanitary regulations, there is a strong likelihood that improper sanitary conditions will occur; likewise, disorders, fires, and general overcrowded living conditions.

(l) Impossibility of City to plan for future hospital requirements, playgrounds, community centers; possibility that residents of trailer camps will become charitable wards of the City.

(m) If occupants of trailers are permitted to become permanent residents of the City, definite disadvantages will result to other members of the community, not only in respect to the aforementioned results, but also in respect to the stabilization of the value and use of property in general in the City. The

City will be unable to safeguard its economical structure. It will not be able to attract desirable citizenship to the community outside the trailer camps. It may, in brief, be looked upon by people who might otherwise be induced to move to the City, as a gypsy camp. However, if the City is permitted to restrain and limit the use of trailer camps merely for outings and vacations, these harmful results can be avoided.

(n) If used as a permanent dwelling, numerous problems concerning taxation of a trailer arise.

(o) The various restrictions contained in plumbing, sanitary and building codes, could be circumvented by the simple expedient of placing wheels under the structure and calling it a permanent home. Other people dwelling or desiring to dwell in the City in regular homes must conform to all the requirements of the building, plumbing and sanitary codes. It is, therefore, unfair and not conducive to the best interest of the community to set up rigid standards in respect to permanent dwellings and then permit people to reside as permanent residents of the community in trailers which do not conform to those standards.

However, the climate of the various states must be considered in any discussion of permanent family life in a trailer. In Brooklyn, Ohio, where inclement weather prevails approximately 9 months of each year, the occupants are confined to very cramped quarters since the average trailer is smaller than a single garage and the health of the individuals is definitely endangered. It is to be further noted that each trailer is a potential fire trap, having only one door and an oil heater inserted in close proximity thereto.

The appellees recognize that the trailer has its use, not only for outings and vacations, but also to supply the lack of permanent homes in communities which have doubled

and tripled in population overnight due to the building of defense plants. The trailer also has its use in certain sections of the country to house migratory workers who travel to different parts of the country in seasonable occupations such as fruit crop pickers, who after the season, move on to the canning industry locations. Obviously, these migratory workers are unable to establish permanent homes and a trailer becomes a great convenience to them. In those cases the establishment of large trailer camps outside of municipal limits is a satisfactory means of eliminating temporary housing shortages due to the large groups of migratory workers. However, none of these problems exist in the City of Brooklyn.

It is to be further noted that no effort has been made by any State to regulate the size, construction, safety or sanitary facilities of an individual trailer; and that at the present time throughout the entire country even a pasteboard box, automobile or old truck body, to which wheels are attached or may be attached, would qualify as a trailer to house a family and could be admitted to any trailer camp. Certainly, this Court should realize that since anything can be used for a trailer it cannot be considered a satisfactory, permanent home.

In the *Renker v. Brooklyn* case, *supra*, the Supreme Court of Ohio completely disposed of Question No. 1 in the instant case by the following syllabus:

> "A municipal ordinance which provides for * * * (3) a 60-day maximum period of occupancy with a 90-day minimum period of withdrawal before again occupying any camp within the village is not an unconstitutional exercise of legislative power."

It is interesting to note some of the reasoning contained in the opinion of Chief Justice Weygandt and found at page 487:

> "* * * It is true that the ordinance imposes upon trailer camp owners and guests certain regulations not applicable to other residents of the municipality. However, in return for this disadvantage they receive from the municipality certain concessions not available to other residents. As illustrative of this, the evidence discloses that the average trailer is approximately 7 feet in width and 17 feet in length, thus having a floor area of but 119 square feet, with as many as five people living therein. * * * In contrast with this, the building code of the village requires a minimum area of 700 square feet in houses with one floor, occupied by other residents. * * * A study of the record demonstrates that trailers and trailer camps have their proper place in present-day life when they are used as temporary accommodations for transients as originally intended, but they cannot be expected to meet the more exacting requirements of a permanent home."

This decision was far-reaching in its import and seemed to settle all legal controversy revolving around the question of the right of a municipality to pass legislation regulating trailer camps, their mode of operation and the time limitation upon the period and length of stay of the occupants.

Counsel for appellees believes that upon reading the written opinion in the *Renker v. Brooklyn* case, *supra*, this Court will find that the same constitutional questions were raised about the same ordinance in the years 1941 and 1942 which have been raised in the instant case, and that not only the Trial Court and the Court of Appeals of Cuyahoga County but the Supreme Court of Ohio found said ordinance was a reasonable and valid exercise of the police powers and did not violate any section of the State or Federal Constitutions.

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Similar provisions limiting the occupancy of a trailer or tourist camp have been held constitutional by the Supreme Courts of Indiana and Michigan in two reported cases: The case of *Spitler v. Town of Munster, et al.*, 214 Indiana 75, was decided by the Supreme Court of Indiana, April 28, 1938. This was a suit to enjoin enforcement of a town ordinance regulating tourist camps. The ordinance contained the following provision:

> "No person shall remain a resident of the tourist camp for more than thirty (30) days."

The court sustained the constitutionality of the ordinance. On page 77, the court, in its opinion, stated:

> "Cities and towns have power to establish reasonable regulations for the protection of the lives, health and property of their citizens * * *. This necessarily implies the power to require the citizens to so use their property as not to defeat such regulations and render them ineffective. Reasonable regulations are not unconstitutional merely because they affect the uses to which private property may be put. This is not taking of private property. It is an exercise of the police power."

And on page 78, the court said:

> "The Town's building and plumbing code fixes requirements for places of permanent residence. Tourist camps are ordinarily considered as places of transient or temporary abode, and the requirements of the tourist camp ordinance are no doubt less than the code requirements for permanent homes. The provision that a person shall not live in a tourist camp for more than thirty (30) days is designed to maintain the transient character of such camps, and the penalty is only a means of enforcing the requirements."

In the case of *Cady v. City of Detroit*, 289 Mich. 499; 286 N. W. 805, decided July 6, 1939 by the Supreme Court

of Michigan, the Court upheld the constitutionality of an ordinance regulating trailer camps under the police power. The first syllabus of that case reads as follows:

> "Sovereign police power of the State includes protection of the safety, health, morals, prosperity, comfort, convenience and welfare of the public or any substantial part of the public."

The 12th syllabus reads:

> "City ordinances designed to regulate municipal development, secure home life, preserve a favorable environment in which to rear children, protect morals and health, safeguard economic structure upon which public good depends, stabilize the use and value of property and to attract a desirable citizenship, are within proper ambit of police power."

The ordinance of the City of Detroit also contained a limitation on occupancy in a trailer camp to ninety days during any one year. *After a thorough analysis of the question, the Court, in a well-considered opinion, concluded that the prohibiting of parking of occupied trailers in trailer camps for an accumulated period of not more than ninety days in any one year was not unconstitutional; that if the legislative department considered that regulation a reasonable differentiation between a temporary and a permanent dwelling place, then it is not for the Court to substitute its judgment for that of the legislature.*

The view expressed by the Supreme Court of Michigan, in the *Cady* case, is in accordance with the established doctrine of constitutional law, to the effect that on questions of policy, the courts cannot substitute their opinion for that of the legislative bodies. And the reason for that rule is well stated in the case of *Otis vs. Parker,* 187 U. S. 606:

> "Considerable latitude must be allowed for differences of view, as well as for peculiar conditions which this Court can know but imperfectly, if at all."

After the Supreme Court of Michigan decided the *Cady v. City of Detroit* case, the legislature of the State of Michigan in the year 1941 amended its regulations on trailers and trailer camps and Section 18 of said amendment provides:

> "This act shall be construed as an emergency act, for the public peace, health and safety. There is a great shortage of habitable houses for defense workers and the trailer coach has become a necessity, and there is a great shortage and need of sanitary regulated trailer coach parks." Pub. Acts Mich. 1941, Act No. 255, Sec. 18.

Thereafter, the Supreme Court of the State of Michigan decided the case of *Richards v. City of Pontiac*, 305 Mich. 666, 9 N. W. 2d 885 (June 7, 1943) and reached an opposite conclusion. The decision in the latter Michigan case obviously is based upon the specific terms of the Michigan Act, Section 18. The decision recites the purposes and scope of the act and holds that it was intended to apply to house trailers as permanent dwellings. Since the latter Michigan decision is based upon an emergency act and said emergency is set forth, the decision should not be considered an applicable authority in the instant controversy.

Inasmuch as the *Renker v. Village of Brooklyn, supra, Spitler v. Town of Munster, et al., supra,* and *Cady v. City of Detroit, supra,* are the only reported decisions in point with the instant case, the following cited cases, although not in point, tend to show the modern trend in dealing with trailer camps: *Commonwealth v. Amos,* 1941, 44 Pa.

Dist. and Co. R. 125, 30 Del. Co. R. 552; *Allinder v. City of Homewood*, 254 Ala. 525, 49 So. 2d 108, 22 A. L. R. 2d 763.

To further consider the reasonableness of the 60-day limitation feature of Section 7 of the Brooklyn ordinance, the Court's attention is directed to the fact that the average trailer camp creates a potential slum area which the cities throughout the country are in the process of spending large sums of money to eliminate. The causes of City slums which we find prevalent in every trailer camp are as follows:

(a) Insufficient lot area per family;

(b) No open spaces;

(c) Small, overcrowded living quarters;

(d) Lack of sanitary toilet and bathing facilities in many trailers;

(e) Fire hazard; heating with oil stove in small quarters with 1 door for ingress and egress;

(f) Lack of play area within and without the trailer for growing children;

(g) A large number of families using the same toilet and bathing facilities and children sharing the same camp facilities with adults.

In accordance with the established doctrine of constitutional law, on the questions of policy, the courts cannot substitute their opinion for that of legislative bodies.

Chief Justice Hughes of the United States Supreme Court in the case of *Purity Extract Co. v. Lynch*, 226 U. S. 192, states the position of the Courts as follows:

> "The Court has no concern with the wisdom of exercising the police power, and unless the enactment has no substantial relation to a proper purpose, cannot declare that the limit of legislative power has been transcended.

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> "For the Courts to attempt to determine whether the exercise of police power within legislative limits is wise, would be contrary to our constitutional system and substitute judicial opinion for the legislative will."

If the legitimacy of the subject is established as coming under the purview of the police power, the means used is a matter of legislative policy.

In the case of *Silz v. Hesterborg*, 211 U. S. 31, the Court says:

> "State in exercise of the police power is the judge of the necessity or expediency of the means adopted."

In the case of *Hebbia v. New York*, 291 U. S. 502, the Court says:

> "The legislature is primarily the judge of the necessity of such an enactment; every possible presumption is in favor of its validity, and though the Court may think the enactment unwise, it may not be annulled unless palpably in excess of legislative power."

In listing various reasons for the enactment of the limitation provision, we firmly believe that the entire question is one for legislative policy and that the provision is not so clearly unreasonable and oppressive as to justify a court substituting its opinion for that of the legislative body.

One of the foremost authorities in the country on city planning, Mr. Lewis Mumford, had the following to say on the subject of using a trailer as a permanent home:

> "During the last few years the admirable improvements that have been made in the design of trailers have deluded a lot of people into thinking that this means something in terms of the permanent dwelling house. Unfortunately, the trailer proves nothing. It shows what can be done, by a series of neat mechanical

tricks in a space so limited that even natural-born gypsies would rebel at making it their winter quarters, whereas the real problem is to simplify all the expensive mechanical insides and spend money on bringing back a little space into living quarters that are already too shrunken."

**Presumption of Constitutionality.**

It is a well established canon of construction that every reasonable presumption be indulged in favor of the constitutionality of an ordinance or statute. In order to declare an ordinance unconstitutional, its unconstitutionality must be plainly and palpably clear.

The modern trend followed by the various courts set forth in *American Jurisprudence* is as follows:

> "As in other applications of the police power, the difficulty concerning regulations relating to real property is in attempting to draw the line between constitutional regulation and unconstitutional invasion. *The tendency is to uphold such legislation as valid regulation, for, under the modern view, the police power extends to attracting a desirable citizenship to a particular locality of a municipality and assuring its permanency, to fostering pride in, and attachment to, the city, to promoting happiness and contentment, to stabilizing the use and value of property, and to promoting the public tranquillity, and good order of the city.* Present-day conceptions of the extent of the public interest, particularly in relation to the public welfare, are very broad; thence, many restrictions on the uses to which real property may be put, many limitations on the type of structures which may be erected on premises in certain localities, and many groupings in definite localities of the enterprises which may be carried on on real property are now sustained as valid exercises of the police power which a few years ago in most jurisdictions were regarded as in-

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validly invading the constitutional rights of the property owners." 11 *Am. J.* 1038.

Aside from the facts, however, the law appears well settled that as a corollary to the proposition that courts will not assume the function of the legislative branch, they will further not inquire into the motives of the legislature, nor the influences which they acted on, to nullify an ordinance which has been duly enacted in legal form within the scope of police power.

*Barbier v. Connelly*, 113 U. S. 27;
*Jacobson v. Mass.*, 197 U. S. 11;
*Armour Company v. North Dakota*, 240 U. S. 510.

A need for municipal regulations of trailer camps has been admitted by appellants and we believe the 60-day limitation on the occupancy of trailers is a necessary regulation to prevent sub-standard shelter from becoming permanent dwellings in a municipality. That said sub-standard dwellings are a constant menace to the health, safety, morals and general welfare of any municipality on the first day as well as the 60th day of occupation. That the 60-day stay period is a reasonable limitation for vacationers, migratory workers and transients passing through the municipality to find permanent standard dwellings.

**2. Does the appeal present a substantial Federal question?**

However, if it should appear in the instant case that the validity of Section 7 of the Brooklyn Trailer Camp Ordinance was formerly drawn in question, it is the policy of this Court to decline jurisdiction whenever it appears that the constitutional question presented is not and was not at the time the decision was rendered, substantial in character.

*Sugarman v. United States*, 249 U. S. 182, 184;

*Avent v. United States*, 266 U. S. 127, 131;
*Campbell v. City of Olney*, 262 U. S. 352;
*Seaboard Air Line Railway Co. v. Watson*, 287 U. S. 86;
*Salinger v. United States*, 272 U. S. 542;
*Wilson v. North Carolina*, 169 U. S. 586, 595;
*Cady v. Georgia*, 323 U. S. 676.

The constitutional question presented by the appellants' Jurisdictional Statement involves Section 1 of the 14th Amendment to the Constitution of the United States (due process clause). To determine whether or not the due process clause has been violated by Section 7 of the City of Brooklyn ordinance, the appellees cite *Miller v. Wilson, Sheriff of Riverside County, California*, 236 U. S. 373. This Court stated in syllabus No. 1:

> "The liberty of contract guaranteed by the due process clause of the 14th Amendment is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest."

And at page 380 this Court further stated:

> "The question is whether the restrictions of the statute have reasonable relation to a proper purpose."

Since we believe that the 60-day limitation set forth in Section 7 of the Brooklyn Trailer Camp ordinance is a reasonable regulation to safeguard the health, safety, morals and general welfare of the municipality, the question of arbitrary restraint is not involved in the instant case. That said regulation has a reasonable relation to a proper public purpose in the same manner as a building code, zoning ordinance or health regulation. If the only practical means found to solve the various municipal problems set forth above is to forbid permanent trailer occupancy, it would seem to follow that the 60-day regulation

is not unreasonable or arbitrary and cannot be said to be unrelated to the public health, morals, safety or welfare.

Therefore it would appear that the limitation on trailer camp occupancy is a question of purely local concern involving climate, living standards and sanitary facilities which vary considerably in each state and in various sections of each state, and the determination of the reasonableness of said regulation should be left at the local level.

**3. Does the judgment rest on an adequate non-Federal basis?**

In all three State Courts a number of non-Federal questions were raised in this action involving such issues as conflict between City and State regulations, power of preemption, taxation and license fees; and all of these various issues were ruled upon by the various State Courts, and particularly by the Supreme Court of the State of Ohio. We believe the syllabus and the opinion of the Supreme Court of the State of Ohio in this matter will support appellees' contention that the judgment rests on an adequate non-Federal basis.

**CONCLUSION.**

Since the 60-day stay period regulation is definitely related to a public purpose, there is no question of arbitrary restraint and the Federal question herein is not substantial. The judgment of the Supreme Court of the State of Ohio rests on an adequate non-Federal basis, and the appeal of the appellants should be dismissed.

Respectfully submitted,

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No. 464. STARY ET AL. *v.* CITY OF BROOKLYN ET AL. Appeal from the Supreme Court of Ohio. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Barnet Hodes, J. Herzl Segal* and *Scott W. Lucas* for appellants. *Michael L. Hearns* for appellees. Reported below: 162 Ohio St. 120, 121 N. E. 2d 11.